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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

**Cung Le, Nathan Quarry, and Jon Fitch,
Bradon Vera, Luis Javier Vazquez, and Kyle
Kingsbury, on behalf of themselves and all
others similarly situated,**

Plaintiffs,

v.

**Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,**

Defendant.

No.: 2:15-cv-01045-RFB-(PAL)

**PLAINTIFFS' EMERGENCY MOTION TO
RESCHEDULE DEPOSITIONS**

I. INTRODUCTION

Plaintiffs file this emergency motion to continue the depositions of Kirk Hendrick and Lawrence Epstein, two long time former and current executives at Zuffa, LLC (“Zuffa”). As demonstrated below, Plaintiffs would be prejudiced if the depositions proceeded on the only days that Zuffa will agree to make Mr. Hendrick and Mr. Epstein available, standing on its position that the current fact discovery period—which is the subject of a separate pending motion—is set to close on April 30, 2017. Among other reasons the failure to continue the depositions would be prejudicial: Zuffa provided only two business days’ notice for the availability of Mr. Hendrick, there are now as many as ten depositions in this case currently set to occur next week, and there are open discovery issues related to both Mr. Hendrick and Mr. Epstein, including those which are the subject to a pending motion to challenge Zuffa’s privilege designation over the Mercer documents. *See* Dkt. No. 282.

II. BACKGROUND

On April 7, Plaintiffs served deposition notices for Kirk Hendrick and Lawrence Epstein. Declaration of Matthew S. Weiler (“Weiler Decl.”), ¶ 3. Out of an abundance of caution, Plaintiffs noticed these depositions for the last week of fact discovery in order to have the depositions noticed prior to the scheduled close of fact discovery. All depositions of Zuffa witnesses—and Plaintiffs—in this litigation have proceeded on the basis of mutual agreement. *Id.* Plaintiffs have accommodated Zuffa’s requests to change noticed deposition dates for witnesses, and have rescheduled dates for certain of Plaintiffs to accommodate Zuffa’s requests. *Id.*

At a deposition in this case taking place on April 19, counsel for Plaintiffs inquired about scheduling Mr. Hendrick and Mr. Epstein’s depositions, asking Zuffa for dates in May when they would be available. Weiler Decl., ¶ 4. For the first time, Zuffa informed Plaintiffs that they planned to produce these witnesses in the last week of April, giving Plaintiffs two business days to prepare for Mr. Hendrick’s deposition. *Id.*

It has long been understood that the depositions of Mr. Epstein and Mr. Hendrick would occur at the end of fact discovery, and after resolution of the dispute concerning a fighter compensation study Zuffa commissioned Mercer to perform, and over which Zuffa has claimed work product protection. Weiler Decl. ¶ 5. In October 2016, Zuffa proposed that the depositions of Mr. Epstein and Mr.

Hendrick occur following the Rule 30(b)(6) deposition on fighter compensation, which has yet to occur due to the open issues concerning Zuffa's assertion of work product over the Mercer documents:

Notwithstanding our disagreement with your position, in an attempt to resolve this dispute, we propose that the 30(b)(6) deposition be rescheduled in its entirety to occur no later than 45 days after Plaintiffs receive the documents they have asserted are necessary to proceed with the Fighter Compensation and Valuation topics and that the individual depositions of Mr. Epstein and Mr. Hendrick be noticed for the days immediately preceding or following the rescheduled 30(b)(6) deposition.

Weiler Decl., Ex. 1. Plaintiffs did not accept Zuffa's offer to move all 30(b)(6) depositions until after the Mercer dispute was resolved, but after follow up discussions the parties proceeded under the assumption that Mr. Hendrick and Mr. Epstein's depositions would occur after discovery disputes had been resolved.

The depositions currently scheduled for the last week of April and first week of May are as follows:

Deponent	Date of Scheduled Deposition
Kirk Hendrick	4/24/2017
Kathryn Duva	4/24/2017
Jeff Aronson	4/25/2017
Gary Ibarra	4/26/2017
Peter Dropick	4/26/2017
Lou DiBella	4/26/2017
John Hertig	4/27/2017
Leon Margules	4/27/2017
Ike Lawrence Epstein	4/28/2017
Deutsche Bank	4/28/2017
The Raine Group, LLC	4/30/2017
Nakisa Bidarian	5/2/2017
Andrew Simon	5/8, 5/9, or 5/10/2017

Moody's	5/10/2017
Dana White	Early May
Michael Mersch	Early May

Plaintiffs' counsel met and conferred with counsel for Zuffa, outlining the ways in which Plaintiffs were prejudiced, but Zuffa would not agree to reschedule the depositions. Weiler Decl. ¶ 8. Plaintiffs' counsel informed Zuffa they would seek this emergency motion. *Id.*

III. ARGUMENT

Plaintiffs would be unduly prejudiced by taking Mr. Hendrick and Mr. Epstein's deposition on short notice, and without the benefit of any court ruling on Plaintiffs' motion to challenge privilege with respect to the Mercer documents, and problems with Zuffa's privilege log.

First, Plaintiffs would be prejudiced absent rescheduling because there is insufficient time to prepare for the depositions. Plaintiffs served notice of Mr. Epstein and Mr. Hendrick's depositions on April 7, but Zuffa did not inform Plaintiffs regarding the availability of either deponent until April 19. Two business days' notice is simply insufficient time to prepare for Mr. Hendrick's deposition. Zuffa has recognized that its assertions of work product would delay Plaintiffs' preparation for the declarations of both Mr. Hendrick and Mr. Epstein, which is why Zuffa proposed to Plaintiffs (and the parties had understood) that their depositions would occur at the end of discovery when issues concerning Zuffa's assertion of work product and privileged were resolved. See Weiler Decl. 1.

Second, Mr. Hendrick, an attorney, was heavily involved in the challenge to the Mercer documents. See Dkt. No. 282 at 3, 5, 10. Mr. Hendrick worked with Zuffa's outside counsel to engage Mercer, and has knowledge of the fighter compensation study. *Id.* Mr. Epstein also has knowledge of the Mercer study, as evidenced by other documents Zuffa has produced to Plaintiffs. See Weiler Decl. Ex. 2 at 4. Zuffa's refusal to await the result of the Court's ruling on the challenge to the Mercer documents is hypocritical and unfair. Zuffa demanded, and Plaintiffs agreed, that the deposition of Scott Coker would await the result of the District of Nevada's ruling on Bellator's motion to quash. Weiler Decl., ¶ 6.

Third, both Mr. Hendrick and Mr. Epstein are attorneys, and Plaintiffs have significant concerns about Zuffa's privilege log. See Weiler Decl., Ex. 2. The issues related to the privilege log include that no

documents concerning the Mercer project are identified, and that therefore and privilege is waived with respect to these documents. *Id.* As was the case with its document productions, Zuffa produced its privilege log late, providing Plaintiffs with a privilege log with over 30,000 entries on April 7, 2017. Weiler Decl. ¶ 7. Zuffa has repeatedly over-designated documents as protected by the attorney-client privilege, which Plaintiffs have discovered because some of these documents have been inadvertently produced and subject to successful challenges by Plaintiffs. See Dkt. Nos. 270, 359.

IV. CONCLUSION

Given the exigency of the matter, and the importance of these depositions, Plaintiffs request a conference call with the Court at the Court's earliest convenience. Alternatively, Plaintiffs request that the Court order the Epstein and Hendrick depositions to occur 30 days after the Court has ruled on the issues related to the Mercer documents (if Plaintiffs' motion to challenge work product is granted); and a week after (if Plaintiffs' motion is denied).

Respectfully Submitted,
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